

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HOWARD MAYFIELD,

Petitioner,

v.

Case No. 1:05-CV-305
(Related Criminal Case No. 1:04-CR-16)

UNITED STATES OF AMERICA,

HON. GORDON J. QUIST

Respondent.

MEMORANDUM ORDER

On April 25, 2005, Howard Mayfield (“Petitioner”) filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (Docket No. 1). In conjunction with this motion, Petitioner has filed numerous other motions. Each motion is discussed in turn below.

1. Motion for Leave to Proceed *In Forma Pauperis* (Docket No. 3)

On April 25, 2005, Petitioner filed a motion to proceed *in forma pauperis*. A petitioner in a § 2255 case is not required to pay a filing fee. Therefore, Petitioner does not need *in forma pauperis* status in order to file his motion. However, Petitioner has also asked for a copy of the plea transcript and the sentencing transcript and has requested appointment of counsel. 28 U.S.C. § 1915(a)(2) allows a prisoner who files a civil action to proceed *in forma pauperis* if the prisoner files an affidavit and a certified copy of the trust fund account (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint. Here, Petitioner has filed the necessary paperwork and has demonstrated that he is unable to pay any relevant fees. Furthermore, on January 29, 2004, the Court found that the Petitioner was indigent and appointed him a federal public defender in the underlying criminal action. *See United States v. Mayfield*, 1:04-CR-16 (W.D. Mich.) (Criminal Docket No. 8). Petitioner has been incarcerated and, to the best of the Court’s

knowledge, remains indigent. Therefore, the Court will order that Petitioner be permitted to proceed *in forma pauperis*.

2. Motion for Plea and Sentencing Transcripts (Docket Nos. 7, 19, 27)

Petitioner has requested that he be provided with a copy of his plea transcript (Criminal Docket No. 31) and sentencing transcript (Criminal Docket No. 35) without having to pay any cost. 28 U.S.C. § 2250 provides that an indigent petitioner is entitled to certain documents without cost. The plea and sentencing transcripts have already been prepared. Therefore, this Court will grant Petitioner's motion for a copy of his plea and sentencing transcripts. The Clerk of Court will be ordered to provide Petitioner with complete copies of these two transcripts.

3. Motion for Appointment of Counsel (Docket Nos. 4, 20)

On May 25, 2005, Petitioner asked the Court to appoint him counsel in this matter. Petitioner contends that he is entitled to an attorney without charge because his § 2255 motion is unusually complex. The Court disagrees. Indigent § 2255 petitioners have no constitutional right to a court-appointed attorney. *See Lavado v. Keohane*, 992 F.2d 601, 604-05 (6th Cir. 1993); *Barker v. Ohio*, 330 F.2d 594 (6th Cir. 1964). After considering the complexity of the issues and the procedural posture of the case, the Court finds that the assistance of counsel is not necessary to the proper presentation of Petitioner's position. Accordingly, Petitioner's motion for appointment of counsel will be denied.

4. Motion for Extension of Time to File a Reply (Docket No. 28)

On October 17, 2005, Petitioner requested an extension of time to file a reply in his § 2255 case. Rule 5 of the Rules Governing 2255 Proceedings states that a petitioner may submit a reply to the respondent's answer or other pleading within a time fixed by the judge. Therefore, the Court will allow Petitioner to file a reply brief limited to 10 pages within 20 days of the entry of this Order.

Therefore,

IT IS HEREBY ORDERED that Petitioner's motion to proceed *in forma pauperis* (Docket No. 3) is **GRANTED**;

IT IS FURTHER ORDERED that Petitioner's motion for a copy of the plea transcript and sentencing transcript (Docket Nos. 7, 19, 27) is **GRANTED**. The Clerk of Court is ordered to provide Petitioner with complete copies of these two transcripts (Criminal Docket Nos. 31, 35) by November 7, 2005;

IT IS FURTHER ORDERED that Petitioner's motion for appointment of counsel (Docket Nos. 4, 20) is **DENIED**;

IT IS FURTHER ORDERED that Petitioner's motion for an extension of time to file a reply brief (Docket No. 28) is **GRANTED**. Petitioner may file a reply brief limited to 10 pages within 20 days of the entry of this Order.

Dated: November 1, 2005

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE